

Jun 15 10 57 AM '98 Federal Communications Commission

DA 98-1088

DISPATCHED BY  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of )  
 )  
 Amendment of Section 73.202(b) ) MM Docket No. 98-90  
 Table of Allotments, ) RM-9270  
 FM Broadcast Stations. )  
 (Dayton, Washington and Weston, Oregon) )

NOTICE OF PROPOSED RULE MAKING

Adopted: June 3, 1998;

Released: June 12, 1998

Comment Date: August 3, 1998

Reply Comment Date: August 18, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Dayton Broadcasting Company, licensee of Station KZZM(FM), Channel 272A, Dayton, Washington, proposing the substitution of Channel 270C2 for Channel 272A at Dayton, and the reallotment of Channel 270C2 from Dayton to Weston, Oregon. Petitioner also requests the modification of Station KZZM(FM)'s license to reflect the new community of license. Petitioner states its intention to apply for Channel 270C2, if reallotted to Weston, Oregon.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that Weston is listed in the 1990 U.S. Census and attributed with a population of 606 persons. Petitioner further states that Census designation is a legally sufficient basis under FCC precedent to demonstrate its status as a community, citing Willows and Dunnigan, California, 10 FCC Rcd 11522 (1995). Petitioner asserts that the reallotment would result in a preferential arrangement of allotments since it would provide the community with its first local aural transmission service, without depriving Dayton of its sole local service, since Station KZHR(FM) would remain licensed to the community. See

Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).<sup>1</sup> Moreover, Dayton will continue to receive five or more reception services, and thus, is considered to be well-served. Petitioner further asserts that the upgrade and reallocation would enable Station KZZM(FM) to increase its service to 156% more people in a 212% larger area. Lastly, Weston is not located in or near an Urbanized Area.

3. We believe petitioner's proposal warrants consideration. However, since petitioner proposes to relocate its transmitter site, the reallocation could result in some areas losing existing reception services.<sup>2</sup> Therefore, petitioner is requested to provide data reflecting the gain and loss areas that would result from the reallocation of Channel 270C2 to Weston, Oregon. Petitioner is also requested to submit information demonstrating the overall public interest benefits that would be derived from the reallocation.

4. An engineering analysis has determined that Channel 270C2 can be allotted to Weston in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.<sup>3</sup> As requested, we shall also propose to modify Station KZZM(FM)'s license to specify operation on Channel 270C2 at Weston, Oregon, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 270C2 at Weston, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Dayton, Washington	223C1, 272A	223C1

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<sup>1</sup>The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

<sup>2</sup>The Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, *supra*, at 5 FCC Rcd 7097.

<sup>3</sup>The coordinates for Channel 270C2 at Weston are North Latitude 45-47-12 West Longitude 118-15-46.

Weston, Oregon

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270C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before August 3, 1998, reply comments on or before August 18, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert Lewis Thompson, Esq.  
Taylor Thieman & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314  
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service

requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposals discussed in the Notice of Proposed Rule Making to which this Appendix is attached. It(s) will be expected to answer whatever questions are presented in initial comments. A proponent of a proposed allotment is also expected to file comments even if it only responds or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.